



Internal Revenue Service Criminal Investigation

Tax Fraud Alert

Excise Tax Fraud

www.irs.gov

IRS Keyword: Fraud

Fiscal Year 2004

Overview

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Organized criminal groups continue to devise schemes to evade federal and state motor fuel excise tax, revenue that is needed to maintain and improve our national transportation systems. The impact of these schemes goes far beyond the revenue loss. They have an adverse effect on the motor fuel industry by eroding the market share of legitimate dealers and even forcing some dealers out of business. Through the Excise Tax Program, CI has made a concerted effort to disrupt or dismantle the criminal organizations responsible for motor fuel tax evasion schemes.

Convictions obtained in motor fuel excise tax investigations have suppressed evasion in many parts of the country, thereby enhancing voluntary compliance. They also provided an impetus for enactment of legislation, which further reduced evasion and contributed to increases in both federal and state revenue.

The removal of organized criminal groups from the marketplace, combined with regulatory reform, as well as enhanced federal, state and industry cooperation, has increased motor fuel tax compliance.

In 1993, legislation moved the point of taxation on diesel fuel to the fuel-dispensing terminal and mandated that diesel fuel used for non-taxable purposes be dyed. Since the implementation of this legislation, evasion has declined and billions in additional revenue have been collected. These reforms were the result by a concerted effort of government and industry.

In FY1998, the Joint Federal/State Motor Fuel Compliance Project was renewed for another six years. This project has been the catalyst for many past successes and is one of the most successful programs of its kind. The project's continuation maintains the cooperative relationships essential for continued success and mandates the design and construction of improved fuel tracking systems to curtail motor tax fuel evasion.

Since opportunities still exist for blending and interstate evasion schemes, continued vigilance is required. Further, the program continues to demonstrate that schemes designed to evade excise tax on tires, freon, and other ozone-depleting chemicals as well as truck chassis have become targets of opportunity for organized criminal groups.

Statistical Data

How to Interpret Criminal Investigation Data

Since actions on a specific investigation may cross fiscal years, the data shown in cases initiated may not always represent the same universe of cases shown in other actions within the same fiscal year.

	FY 2004	FY 2003	FY 2002
Criminal Investigations Initiated	5	12	5
Prosecution Recommendations	6	5	4
Indictments/Informations	4	4	5
Sentenced	5	5	24
Incarceration Rate*	100.0%	100.0%	37.5%
Average Months to Serve	26	23	17

*Incarceration may include prison time, home confinement, electronic monitoring, or a combination thereof.

Examples of Excise Tax Investigations

The following examples of excise fraud investigations are excerpts from public record documents on file in the court records in the judicial district in which the cases were prosecuted.

Defendant to Serve 17 Years in Prison for Smuggling Freon and Evading Taxes Defendant Concealed Profits in Offshore Bank Accounts

On May 21, 2004, in Ft. Lauderdale, FL, Marc M. Harris was sentenced to 204 months in prison, followed by 3 years supervised release, and a \$20,324,560 fine. Harris was also ordered to pay restitution to the Internal Revenue Service in the amount of \$6,588,949.50. Harris was convicted of conspiring to defraud the Internal Revenue Service, conspiracy to commit money laundering and evading excise taxes. Evidence introduced at trial established that Harris conspired with Aurelio Vigna, Joseph Vigna and others to evade federal excise taxes on the sale of Freon to customers in South Florida. They failed to report and remit those taxes to the Internal Revenue Service and filed phony paperwork to conceal domestic sales of illegally imported Freon. To hide the sales proceeds, Harris also created and used domestic and foreign shell corporations and related bank accounts. He laundered more than \$8 million in proceeds generated from the Freon smuggling scheme for Aurelio and Joseph Vigna by use of a series of wire transfers through Panamanian corporations and bank accounts. As a result of the scheme, between January 1993 and June 1994, Harris evaded approximately \$6.2 million in excise taxes and also helped his co-conspirators allegedly evade additional individual and corporate income taxes on the profits.

Owner of Grain Trailer Manufacturing Business Sentenced for Excise Tax Evasion

On December 15, 2003, in Indianapolis, IN, John W. White was sentenced to 18 months in prison for attempting to evade excise taxes, filing a false federal income tax return for 1997, and making a false statement with respect to bankruptcy filings. In addition to jail time, White was ordered to pay \$218,198 in restitution to the IRS. White owned and operated a grain trailer manufacturing business. In 1997, the

business had excise taxable trailer sales in the amount of \$178,025 resulting in the evasion of \$27,780 in excise taxes. White also filed a false U.S. Individual Income Tax Return which underreported approximately \$91,667 in gross receipts of from his business.

Employee of Covenant Oil Company Sentenced to 15 Months for Motor Fuel Excise Tax Evasion

On October 14, 2003, in Boston, MA, Richard M. Straka was sentenced to 15 months imprisonment followed by three years supervised release. Straka pleaded guilty on July 7, 2003, to evading the assessment and payment of motor vehicle fuel excise taxes owed by Covenant Oil Company, Inc. According to evidence at the plea hearing, Straka, an employee of Covenant Oil, he sold diesel fuel mixed with untaxed kerosene to Covenant Oil customers.

Owner of Covenant Oil Company Convicted on Excise Taxes Evasion Charges

On June 5, 2003, in Boston, MA, Augustine Pesaturo, Jr., owner of Covenant Oil Company, Inc., was convicted of evading the assessment and payment of motor vehicle fuel excise taxes owed by his business. Pesaturo was convicted of one count of conspiracy to defraud the United States, three counts of tax evasion, and once count of filing a false U.S. Corporate Income Tax Return. Evidence present at trial proved that Pesaturo directed his drivers to blend untaxed kerosene and home heating oil with diesel fuel prior to selling the fuel to various trucking companies.

Kingpin in Ozone Depleting CFCs Import Conspiracy Sentenced

On January 8, 2003, in Hartford, CT, Barry Himes was sentenced to 6 ½ years in prison and ordered to pay \$1.8 million in restitution, as well as a fine of \$12,500. In accordance with his plea agreement, Himes had previously forfeited a \$3 million dollar mansion on the Connecticut Rive, a BMW sedan, and a three-carat diamond ring. Himes is the lead defendant in a complex multi-year, multi-million dollar conspiracy to import and sell ozone depleting chlorofluorocarbon gases (CFCs) by false pretenses and to avoid taxes. John Mucha, a co-conspirator, was sentenced to four years in prison and ordered to pay \$1.2 million in restitution. Mucha also forfeited his own BMW sedan. A total of ten individuals have pleaded guilty to federal charges in connection with this investigation.

The defendants imported and sold more than one million pounds of CFCs between 1996 and 1998, using the name of various shell companies to conceal their control of these transactions to defeat any efforts by the IRS to collect the resulting excise or income taxes. They used multiple offshore bank accounts in the Bahamas and Antigua as well as other corporate bank accounts in Nevada and New York, to launder the money, hide their income, and create a false appearance that the income from the CFC sales proceeds was going to unrelated third parties.

New Yorker Sentenced To Prison For Motor Fuel Excise Tax Fraud

On February 14, 2002, in Islip, NY, William S. Nappo, owner of Eagle Oil was sentenced to 21 months in prison followed by three years of supervised release and ordered to pay the government \$1.3 million. Nappo pled guilty in June 2001 for conspiring to defraud the United States in 1994 and 1995 by selling 5.7 million gallons of diesel excise tax fuel for on-road vehicles without paying the federal excise tax. Nappo was able to carry out the scheme by falsifying documents claiming he was selling heating oil instead of diesel fuel.

For more summaries, visit www.irs.gov and enter Keyword: Fraud.

Where Do You Report Suspected Tax Fraud Activity?

If you suspect tax fraud or know of an abusive return preparer, you should report this activity to your nearest Internal revenue service office. This information can be communicated by phone or in writing to your local IRS office. You can contact the IRS by phone at 1-800-829-0433.